



General Assembly

January Session, 2015

## ***Substitute Bill No. 979***



### ***AN ACT CONCERNING THE CONNECTICUT UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2015*) Sections 1 to 12,  
2       inclusive, of this act may be cited as the "Connecticut Uniform  
3       Fiduciary Access to Digital Assets Act".

4       Sec. 2. (NEW) (*Effective October 1, 2015*) As used in sections 1 to 12,  
5       inclusive, of this act:

6       (1) "Account holder" means (A) a person that has entered into a  
7       terms of service agreement with a custodian, or (B) a fiduciary for such  
8       person;

9       (2) "Agent" means an attorney in fact who is granted authority  
10      under a durable or nondurable power of attorney;

11      (3) "Carries" means engages in the transmission of electronic  
12      communications;

13      (4) "Catalog of electronic communications" means information that  
14      identifies each person with which an account holder has had an  
15      electronic communication, the time and date of the communication,  
16      and the electronic address of the person;

17      (5) "Conservator" means (A) a conservator, as defined in subsection

18 (a) of section 45a-644 of the general statutes, who is appointed by a  
19 court to manage the estate of a living adult individual, (B) a  
20 conservator granted voluntary representation of an individual  
21 pursuant to section 45a-646 of the general statutes, or (C) a temporary  
22 conservator appointed pursuant to section 45a-654 of the general  
23 statutes;

24 (6) "Conserved person" means an individual for whom a  
25 conservator has been appointed. "Conserved person" includes a  
26 respondent, as defined in section 45a-644 of the general statutes, for  
27 whom an application for the appointment of a conservator is pending;

28 (7) "Content of an electronic communication" means information  
29 concerning the substance or meaning of the communication which:

30 (A) Has been sent or received by an account holder;

31 (B) Is maintained in electronic storage by a custodian providing an  
32 electronic communication service to the public or is carried or  
33 maintained by a custodian providing a remote computing service to  
34 the public; and

35 (C) Is not readily accessible to the public;

36 (8) "Court" means a court of competent jurisdiction, including, but  
37 not limited to, the Probate Court or the Superior Court;

38 (9) "Custodian" means a person that carries, maintains, processes,  
39 receives or stores a digital asset of an account holder;

40 (10) "Digital asset" means a record that is electronic. "Digital asset"  
41 does not include an underlying digital asset or liability unless the  
42 digital asset or liability is itself a record that is electronic;

43 (11) "Electronic" means relating to technology having electrical,  
44 digital, magnetic, wireless, optical or electromagnetic capabilities or  
45 similar capabilities;

46       (12) "Electronic communication" has the same meaning as provided  
47 in 18 USC 2510(12), as amended from time to time;

48       (13) "Electronic communication service" means a custodian that  
49 provides to an account holder the ability to send or receive an  
50 electronic communication;

51       (14) "Executor" means an executor, administrator, special  
52 administrator or temporary administrator of an estate or any person  
53 who performs substantially the same function as such executor,  
54 administrator, special administrator or temporary administrator under  
55 the laws of this state other than sections 1 to 12, inclusive, of this act;

56       (15) "Fiduciary" means an original, additional or successor executor,  
57 or a conservator, agent or trustee;

58       (16) "Information" means data, text, images, videos, sounds, codes,  
59 computer programs, software, databases or the like;

60       (17) "Person" means an individual, estate, trust, business or  
61 nonprofit entity, public corporation, government or governmental  
62 subdivision, agency or instrumentality or other legal entity;

63       (18) "Power of attorney" means a record that grants an agent  
64 authority to act in the place of a principal;

65       (19) "Principal" means an individual who grants authority to an  
66 agent in a power of attorney;

67       (20) "Record" means information that is inscribed on a tangible  
68 medium or that is stored in an electronic or other medium and is  
69 retrievable in perceivable form;

70       (21) "Remote computing service" means a custodian that provides to  
71 an account holder computer processing services or the storage of  
72 digital assets by means of an electronic communications system, as  
73 defined in 18 USC 2510(14), as amended from time to time;

74 (22) "Terms of service agreement" means an agreement that controls  
75 the relationship between an account holder and a custodian;

76 (23) "Trustee" means a fiduciary with legal title to property under a  
77 will or pursuant to an agreement or declaration that creates a beneficial  
78 interest in another person. "Trustee" includes a successor trustee; and

79 (24) "Will" includes a codicil, a testamentary instrument that only  
80 appoints an executor and an instrument that revokes or revises a  
81 testamentary instrument.

82 Sec. 3. (NEW) (*Effective October 1, 2015*) (a) Sections 1 to 12, inclusive,  
83 of this act apply to:

84 (1) An agent acting under a power of attorney executed before, on  
85 or after October 1, 2015;

86 (2) An executor acting for a decedent who died before, on or after  
87 October 1, 2015;

88 (3) A conservator acting in a conservatorship proceeding, whether  
89 pending in a court or commenced before, on or after October 1, 2015;

90 (4) A trustee acting under a trust created before, on or after October  
91 1, 2015; and

92 (5) Any proceeding filed in a court prior to October 1, 2015,  
93 pursuant to section 45a-334a of the general statutes, revision of 1958,  
94 revised to January 1, 2015, that is pending on October 1, 2015.

95 (b) Sections 1 to 12, inclusive, of this act do not apply to a digital  
96 asset of an employer used by an employee in the ordinary course of  
97 the employer's business.

98 Sec. 4. (NEW) (*Effective October 1, 2015*) Subject to the provisions of  
99 subsection (b) of section 8 of this act and unless otherwise ordered by  
100 the court or provided in the will of a decedent, the executor of the  
101 decedent has the right to access:

102 (1) The content of an electronic communication that the custodian is  
103 permitted to divulge under the Electronic Communications Privacy  
104 Act, 18 USC 2702(b), as amended from time to time;

105 (2) Any catalog of electronic communications sent or received by the  
106 decedent; and

107 (3) Any other digital asset in which at death the decedent had a  
108 right or interest.

109 Sec. 5. (NEW) (*Effective October 1, 2015*) Subject to the provisions of  
110 subsection (b) of section 8 of this act, the court, after notice and  
111 personal service in the manner prescribed under subsection (a) of  
112 section 45a-649 of the general statutes for matters under chapter 802h  
113 of the general statutes, and an opportunity for a hearing in the manner  
114 prescribed in sections 45a-645a to 45a-645c, inclusive, of the general  
115 statutes, a court may grant a conservator the right to access:

116 (1) The content of an electronic communication that the custodian is  
117 permitted to divulge under the Electronic Communications Privacy  
118 Act, 18 USC 2702(b), as amended from time to time;

119 (2) Any catalog of electronic communications sent or received by the  
120 conserved person; and

121 (3) Any other digital asset in which the conserved person has a right  
122 or interest.

123 Sec. 6. (NEW) (*Effective October 1, 2015*) (a) To the extent a power of  
124 attorney expressly grants an agent authority over the content of an  
125 electronic communication of the principal and subject to the provisions  
126 of subsection (b) of section 8 of this act, the agent has the right to access  
127 the content of an electronic communication that the custodian is  
128 permitted to divulge under the Electronic Communications Privacy  
129 Act, 18 USC 2702(b), as amended from time to time.

130 (b) Subject to the provisions of subsection (b) of section 8 of this act

131 and unless otherwise ordered by the court or provided by a power of  
132 attorney, an agent has the right to access:

133 (1) Any catalog of electronic communications sent or received by the  
134 principal; and

135 (2) Any other digital asset in which the principal has a right or  
136 interest.

137 Sec. 7. (NEW) (*Effective October 1, 2015*) (a) Subject to the provisions  
138 of subsection (b) of section 8 of this act and unless otherwise ordered  
139 by the court or provided in a trust instrument, a trustee that is an  
140 original account holder has the right to access any digital asset held in  
141 trust, including any catalog of electronic communications of the trustee  
142 and the content of an electronic communication.

143 (b) Subject to the provisions of subsection (b) of section 8 of this act  
144 and unless otherwise ordered by the court or provided in a trust  
145 instrument, a trustee that is not an original account holder has the  
146 right to access:

147 (1) The content of an electronic communication that the custodian is  
148 permitted to divulge under the Electronic Communications Privacy  
149 Act, 18 USC 2702(b), as amended from time to time;

150 (2) Any catalog of electronic communications sent or received by the  
151 original or any successor account holder; and

152 (3) Any other digital asset in which the original or any successor  
153 account holder has a right or interest.

154 Sec. 8. (NEW) (*Effective October 1, 2015*) (a) A fiduciary that is an  
155 account holder or has the right under sections 1 to 12, inclusive, of this  
156 act to access a digital asset of an account holder:

157 (1) Subject to the terms of service agreement, copyright law and  
158 other applicable law, may take any action concerning the digital asset

159 to the extent of the account holder's authority and the fiduciary's  
160 power under the law of this state other than sections 1 to 12, inclusive,  
161 of this act;

162 (2) Has, for the purpose of applicable electronic privacy laws, the  
163 lawful consent of the account holder for the custodian to divulge the  
164 content of an electronic communication to the fiduciary; and

165 (3) Is, for the purpose of applicable computer fraud and  
166 unauthorized computer access laws, including, but not limited to,  
167 section 53a-251 of the general statutes, an authorized user of such  
168 digital asset and is authorized to access such digital asset.

169 (b) Unless an account holder, after October 1, 2015, agrees to a  
170 provision in a terms of service agreement that limits a fiduciary's  
171 access to a digital asset of the account holder by an affirmative act  
172 separate from the account holder's assent to other provisions of the  
173 agreement:

174 (1) The provision is void as against the strong public policy of this  
175 state; and

176 (2) The fiduciary's access under sections 1 to 12, inclusive, of this act  
177 to a digital asset does not violate the terms of service agreement even if  
178 the agreement requires notice of a change in the account holder's  
179 status.

180 (c) A choice of law provision in a terms of service agreement is  
181 unenforceable against a fiduciary acting under sections 1 to 12,  
182 inclusive, of this act to the extent the provision designates law that  
183 enforces a limitation on a fiduciary's access to a digital asset, and the  
184 limitation is void under subsection (b) of this section.

185 (d) As to tangible personal property capable of receiving, storing,  
186 processing or sending a digital asset, a fiduciary with authority over  
187 the property of a decedent, conserved person, principal or settlor:

188 (1) Has the right to access the tangible personal property and any  
189 digital asset stored in the tangible personal property; and

190 (2) Is an authorized user of such digital asset and is authorized to  
191 access such digital asset for the purposes of any applicable computer  
192 fraud and unauthorized computer access laws, including, but not  
193 limited to, section 53a-251 of the general statutes.

194 Sec. 9. (NEW) (*Effective October 1, 2015*) (a) If a fiduciary with a right  
195 under sections 1 to 12, inclusive, of this act to access a digital asset of  
196 an account holder complies with subsection (b) of this section, the  
197 custodian shall comply with the fiduciary's request in a record for:

198 (1) Access to the digital asset;

199 (2) Control of the digital asset; and

200 (3) A copy of the digital asset to the extent permitted by copyright  
201 law.

202 (b) If a request under subsection (a) of this section is made by:

203 (1) An executor with the right of access under section 4 of this act,  
204 the request must be accompanied by a certificate of appointment of the  
205 executor or court order;

206 (2) A conservator with the right of access under section 5 of this act,  
207 the request must be accompanied by a court certified order that gives  
208 the conservator authority over the digital asset;

209 (3) An agent with the right of access under section 6 of this act, the  
210 request must be accompanied by an original or a copy of the power of  
211 attorney that authorizes the agent to exercise authority over the digital  
212 asset and a certification of the agent, under penalty of perjury, that the  
213 power of attorney is in effect; and

214 (4) A trustee with the right of access under section 7 of this act, the  
215 request must be accompanied by an original or a copy of the trust



216 instrument or a certification of trust under subsection (d) of this section  
217 that authorizes the trustee to exercise authority over the digital asset.

218 (c) A custodian shall comply with a request made under subsection  
219 (a) of this section not later than sixty days after receipt of the request. If  
220 the custodian fails to comply with such request, the fiduciary may  
221 apply to the court for an order directing compliance.

222 (d) Instead of furnishing a copy of the trust instrument under  
223 subdivision (4) of subsection (b) of this section, the trustee may  
224 provide a certification of trust. The certification:

225 (1) Must contain the following information:

226 (A) That the trust exists and the date the trust instrument was  
227 executed;

228 (B) The identity of the settlor;

229 (C) The identity and address of the trustee;

230 (D) A statement that there is nothing inconsistent in the trust with  
231 respect to the trustee's powers over digital assets;

232 (E) A statement of whether the trust is revocable and the identity of  
233 any person holding a power to revoke the trust;

234 (F) A statement of whether a cotrustee has authority to sign or  
235 otherwise authenticate; and

236 (G) Whether all or fewer than all cotrustees are required to exercise  
237 powers of the trustee;

238 (2) Must be signed or otherwise authenticated by a trustee;

239 (3) Must state that the trust has not been revoked, modified or  
240 amended in a manner that would cause the representations contained  
241 in the certification of trust to be incorrect; and

242 (4) Need not contain the dispositive terms of the trust.

243 (e) A custodian that receives a certification of trust under subsection  
244 (d) of this section may require the trustee to provide copies of excerpts  
245 from the original trust instrument and later amendments designating  
246 the trustee and conferring on the trustee the power to act in the  
247 pending transaction.

248 (f) A custodian that acts in reliance on a certification of trust under  
249 subsection (d) of this section without knowledge that the  
250 representations contained in the certification of trust are incorrect is  
251 not liable to any person for so acting and may assume without inquiry  
252 the existence of facts stated in the certification of trust.

253 (g) A person that in good faith enters into a transaction in reliance  
254 on a certification of trust under subsection (d) of this section may  
255 enforce the transaction against the trust property as if the  
256 representations contained in the certification of trust were correct.

257 (h) A person that demands the trust instrument in addition to a  
258 certification of trust under subsection (d) of this section or excerpts  
259 under subsection (e) of this section is liable for damages, including  
260 attorneys' fees, if the court determines that the person did not act in  
261 good faith in demanding the trust instrument or excerpts.

262 (i) This section does not limit the right of a person to obtain a copy  
263 of a trust instrument in a court proceeding concerning the trust.

264 Sec. 10. (NEW) (*Effective October 1, 2015*) A custodian and its officers,  
265 employees and agents are immune from liability for an act or omission  
266 done in good faith in compliance with sections 1 to 12, inclusive, of this  
267 act.

268 Sec. 11. (NEW) (*Effective October 1, 2015*) In applying and construing  
269 sections 1 to 12, inclusive, of this uniform act, consideration must be  
270 given to the need to promote uniformity of the law with respect to its  
271 subject matter among states that enact it.

272 Sec. 12. (NEW) (*Effective October 1, 2015*) Sections 1 to 12, inclusive,  
 273 of this act modify, limit or supersede the Electronic Signatures in  
 274 Global and National Commerce Act, 15 USC 7001 et seq., but do not  
 275 modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c) or  
 276 authorize electronic delivery of any of the notices described in Section  
 277 103(b) of said act, 15 USC 7003(b).

278 Sec. 13. Section 45a-334a of the general statutes is repealed. (*Effective*  
 279 *October 1, 2015*)

|   |                        |                  |
|---|------------------------|------------------|
| This act shall take effect as follows and shall amend the following sections: |                        |                  |
| Section 1   | <i>October 1, 2015</i> | New section      |
| Sec. 2  | <i>October 1, 2015</i> | New section      |
| Sec. 3  | <i>October 1, 2015</i> | New section      |
| Sec. 4  | <i>October 1, 2015</i> | New section      |
| Sec. 5  | <i>October 1, 2015</i> | New section      |
| Sec. 6  | <i>October 1, 2015</i> | New section      |
| Sec. 7  | <i>October 1, 2015</i> | New section      |
| Sec. 8  | <i>October 1, 2015</i> | New section      |
| Sec. 9  | <i>October 1, 2015</i> | New section      |
| Sec. 10   | <i>October 1, 2015</i> | New section      |
| Sec. 11   | <i>October 1, 2015</i> | New section      |
| Sec. 12   | <i>October 1, 2015</i> | New section      |
| Sec. 13   | <i>October 1, 2015</i> | Repealer section |

**Statement of Legislative Commissioners:**

Section 9 was amended to change "certification" to "certification of trust" for consistency, and section 9(h) was amended to add "or excerpts" for accuracy.

**JUD**      *Joint Favorable Subst. -LCO*